

Attorney Docket No. 600.536US1

SCHWEGMAN ■ LUNDBERG ■ WOESSNER ■ KLUTH

## United States Patent Application

### COMBINED DECLARATION AND POWER OF ATTORNEY

As a below named inventor I hereby declare that: my residence, post office address and citizenship are as stated below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: DNA ENCODING METHYMYCIN AND PIKROMYCIN.

The specification of which was filed on November 19, 2001 as application serial no. 09/988384.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with 37 C.F.R. § 1.56 (attached hereto). I also acknowledge my duty to disclose all information known to be material to patentability which became available between a filing date of a prior application and the national or PCT international filing date in the event this is a Continuation-In-Part application in accordance with 37 C.F.R. § 1.63(e).

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**Application Number**09/105537  
PCT/US99/14398**Filing Date**June 26, 1998  
June 25, 1999**Status**Issued  
Pending

Attorney Docket No.: 600.536US1  
 Serial No. 09/988384  
 Filing Date: November 19, 2001

Page 2 of 4

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Anglin, J. Michael	Reg. No. 24,916	Gorrie, Gregory J.	Reg. No. 36,530	Newson, Ruth H.	Reg. No. 26,657
Arora, Sunee	Reg. No. 42,267	Greaves, John N.	Reg. No. 40,362	Nielsen, Walter W.	Reg. No. 25,539
Beeckman, Marvin L.	Reg. No. 38,377	Harris, Robert J.	Reg. No. 37,346	Obermark, Thomas C.	Reg. No. 55,506
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Chadwick, Robin A.	Reg. No. 36,477	Lacy, Rodney L.	Reg. No. 41,136	Peterson, David C.	Reg. No. 47,857
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Cochran, David R.	Reg. No. 46,632	Malin, Peter L.	Reg. No. 44,894	Schuman, Sherry W.	Reg. No. 39,422
Dahl, John M.	Reg. No. 44,639	Mates, Robert E.	Reg. No. 35,271	Schwegman, Micheal L.	Reg. No. 25,816
DeLizio, Andrew	Reg. No. 52,806	McCrackin, Ann M.	Reg. No. 42,858	Speier, Gary J.	Reg. No. 45,458
Drake, Eduardo E.	Reg. No. 40,594	Mehrle, Joseph P.	Reg. No. 45,535	Steffey, Charles E.	Reg. No. 25,179
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Forrest, Bradley A.	Reg. No. 30,837	Muller, Mark V.	Reg. No. 37,509	Tong, Vict V.	Reg. No. 45,416
Garett, John R.	Reg. No. 27,888	Nelson, A. James	Reg. No. 28,650	Woessner, Warren D.	Reg. No. 30,440

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P.O. Box 2938, Minneapolis, MN 55402  
 Telephone No. (612)373-6900

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor number 1 : David H. Sherman

Citizenship:

United States of America

Residence: An Arbor, MI

Post Office Address:

2574 Bedford Road

An Arbor, MI 48104

Signature: \_\_\_\_\_

David H. Sherman

Date: \_\_\_\_\_

Additional inventors are being named on separately numbered sheets, attached hereto.

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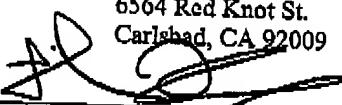
Full Name of joint inventor number 2 : Hung-Wen Liu  
Citizenship: United States of America  
Post Office Address: 7130 Las Ventanas Drive  
Austin, TX 78731

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Hung-Wen Liu

Full Name of joint inventor number 3 : Yongquan Xue  
Citizenship: China  
Post Office Address: 1261 Fifield Place  
St. Paul, MN 55108

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Yongquan Xue

Full Name of joint inventor number 4 : Lishan Zhao  
Citizenship: China  
Post Office Address: 6564 Red Knot St.  
Carlsbad, CA 92009

Signature: \_\_\_\_\_ Date: 4/26/04  
  
Lishan Zhao

§ 1.56 Duty to disclose information material to patentability.

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
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(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

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Signature: \_\_\_\_\_

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Citizenship: China  
Post Office Address: 1261 Fifield Place  
St. Paul, MN 55108

(X/Y)

Residence: St. Paul, MN  
5678 Deer Trail West  
Shoreview, MN 55126

Signature: \_\_\_\_\_  
Yongquan Xue

Date: 4/27/2004

Full Name of joint inventor number 4: Lishan Zhao  
Citizenship: China  
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Carlsbad, CA 92009

Residence: Carlsbad, CA

Signature: \_\_\_\_\_  
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Residence: An Arbor, MI

Signature: David H. Sherman

Date: 4/28/04

Additional inventors are being named on separately numbered sheets, attached hereto.

FROM :David Sherman

FAX NO.: 7346153641  
DRAFTED, LUNDARK, RUSS

Apr. 28 2004 09:40AM P4  
WUW4/VWD

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Full Name of joint inventor number 2 : Hung-Wen Liu  
Citizenship: United States of America Residence: Austin, TX  
Post Office Address: 7130 Las Ventanas Drive  
Austin, TX 78731

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**§ 1.56 Duty to disclose information material to patentability.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:

- (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
- (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
- (2) It refutes, or is inconsistent with, a position the applicant takes in:
  - (i) Opposing an argument of unpatentability relied on by the Office, or
  - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) Each inventor named in the application;
- (2) Each attorney or agent who prepares or prosecutes the application; and
- (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.